Ormiston represents to this Court that abandonment of the property of the estate occurred before the closing of William J. Prater's Bankruptcy Case, which is incorrect and they know better. Their mistaken contentions are essentially fraud upon this Court.

This petitioner's Bankruptcy Case is not the ordinary case. During the long protracted Bankruptcy Case William J. Prater paid out several hundred thousand dollars in monies to different parties, paid the attorney's fees, paid the administrative fees, court costs, and reached a settlement agreement with all the parties concerned.

This settlement agreement provided in no uncertain terms as follows:

"Closing W. Prater's bankruptcy case would mean that Flinn would not pursue the recovery of any of these potential assets, and that any interest of the bankruptcy estate in those potential assets will be abandoned."

The Settlement Agreement agreed to by all the parties and their counsel provided as set forth above that the property of William J. Prater would be abandoned back to him at the closing of the case pursuant to 11 U.S.C. § 554 (c) by operation of the law.

The Trustee and his counsel then sought permission from the Bankruptcy Court, which was consistent with the Settlement Agreement and filed a motion to abandon property of the estate back to William J. Prater, the motion was granted and everyone was in agreement that abandonment of property of the estate was to take place at the closing of the Bankruptcy Case.

Respondents argue that there is no required form necessary to abandon property, and that there was nothing left to do for the trustee to do. Opp. Br. 18

If one opens a book and one should he would understand that a notice of abandonment is a required form, when property of the estate is abandoned. The trustee nor his counsel filed a notice of abandonment because it was

agreed by all parties and their counsel that the real property of the estate would be abandoned by operation of the law at the closing of the bankruptcy case, pursuant to 11 U.S.C 554 (c)(1).

Strikingly, respondents ignore indisputable evidence by an officer of the Bankruptcy Court that property of the estate remained property of the estate until the closing of the Bankruptcy Case on June 11, 2002. See Declarations of Trustee Kenny W. Flinn Pet. App. 28a - 31a.

Both of Mr. Flinn's concise and sworn declarations were submitted to both the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit did not rule on petitioner's request for judicial notice and one can understand why. The United States District Court Judge reviewed both these declarations when making his *de novo* review decision.

The refusal by the courts to judicial notice these sworn declarations were an egregious abuse of discretion, which lead to egregious judgments.

Federal Rule of Evidence 201 states in relevant part:

"(d) **When Mandatory**. A court shall take judicial notice if requested by a party and supplied with the necessary information."

Mr. Flinn's first declaration was filed in the Superior Court of the State of California County of Butte. Respondent counsel knows it to be a fact because it is contained in his files as a recorded document in the Butte County Court. This declaration was submitted both to the United States District Court and the 9th Circuit Court as a certified copy from the Butte County Court.

Respondents grasp at straws alleging that the action should have been filed in the Bankruptcy Court instead of the United States District Court. Courts have consistently ruled that there is no statue of limitations for violations of the Automatic Stay. Court have accepted actions for

violation of the Automatic Stay in District Court up to six years after the Bankruptcy case was terminated.

Respondents further allege that Ormiston is not a proper defendant since the Butte County action was filed by the Ormiston Family Association. This contention is meritless since the Ormiston Family Association does not exist as legal entity. Furthermore individuals in a legal family association may be sued as individuals.

Respondent for filler in their statement of facts Opp. Br. 4,5,6, attempt to prejudice the Court with totally irrelevant meritless allegations contained in their State Court complaint. Respondents have been to court with one senior citizen defendant and of course lost based on some of these same allegations. Respondents are now on their third law firm in State Court.

CONCLUSION

Based on the foregoing reasons and the reasons contained in petitioner's opening brief and appendix William J. Prater respectfully requests that this Honorable Court grant his petition and reverse the judgments of the United States Court of Appeals for the Ninth Circuit and the United States District Court and remand the case back to the United States District Court for further proceedings.

DATED: October 3, 2005

Respectfully Submitted

William J. Prater

William J. Prater
Petitioner Pro Se